



Diksha Rane

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.4179/2023

SHARIQ WALI SAYED

..APPLICANT

VS.

UNION OF INDIA & ANR.

..RESPONDENTS

Adv. Anil G. Lalla a/w. Adv. Aryan K. Kotwal, Adv. Sachin K. Shirke for the applicant.

Adv. Manisha Jagtap for the respondent-NCB.

Smt. Sangeeta D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 12, 2024.

P.C. :

1. Heard learned counsel for the applicant, learned counsel for respondent No.1 and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 8(c), 22(c), 27, 27A, 28, 29, 30, 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") registered vide C.R. No.73 of 2021 (F.No.- NCB/MZU/CR-73/2021) with Narcotics Control Bureau, Mumbai.

3. As per the panchanama dated 29/7/2021, 103.4 gms (commercial quantity) of contraband Mephedrone (MD) was

recovered from the conscious possession of the accused nos. 1 and 2 i.e. Lazinabi Usman Khan and Raj Kumar Panday in the same C.R.. They were arrested on 29/7/2021. On the basis of the leads in investigation and custodial interrogation of the accused nos.1 and 2, upon a follow-up action, a quantity of 10.2 gms of MD which is an intermediate quantity was seized from the conscious possession of the accused no.3- Abusufiyan Shakil Ahmed in the same C.R. Upon further leads in investigation and further custodial interrogation of the accused persons, the respondent intercepted accused no. 4 - Jaiprakash Bhatt and accused no.5- Vijay Kumar Singh. The accused nos.4 and 5 were placed under arrest on 11/9/2021 in the same C.R. On the basis of further leads in investigation, the present applicant (accused no.6) was arrested on 16/9/2021 under Sections 8(c) read with Sections 22(c), 27, 27A, 28, 29, 30 and 35 of the NDPS Act. On vital leads given by the applicant, the respondent, on 22/9/2021, on a follow-up action, apprehended a wanted accused. It appears that the applicant had absconded after his arrest but was arrested again on 21/9/2021 with 5 gm. MD which was in his

conscious possession from a hotel named 'Spot Light'. On the basis of further leads in investigation and custodial interrogation of the accused who were arrested, the respondent on a follow up action, arrested the accused no.7 - Safi Ajmal Vinchu who was found in possession of 58.5 gms of MD. The accused no.8 came to be arrested on 16/9/2021 with 10 gms. of MD (commercial quantity).

4. Learned counsel for the respondent submitted that though the recovery shown from the applicant is 5 gm of MD which is a non-commercial quantity, however, from the other co-accused with whom the present applicant is actively involved, a huge quantity of more than 100 gms of MD was recovered. Learned counsel submitted that there are statements of wife and daughter of the accused Jaiprakash Bhatt who categorically say that it is the present applicant who was supplying the contraband MD to the accused Jaiprakash Bhatt. Learned counsel for the respondent invited my attention to the materials on record indicating the financial transactions in favour of the present applicant that money was transferred by the wife and daughter of the accused Jaiprakash Bhatt in the account of

the present applicant. It is one of the contention of learned counsel for the respondent that upon his arrest on 16/9/2021, the applicant had absconded and arrested later on 21/9/2021 with 50 gm. MD. At the time of his initial arrest on 16/9/2021, there was no contraband found from his possession.

5. Factually the applicant was found in possession of 5 gm MD which is a non-commercial quantity. It is alleged that it is the applicant who has supplied drugs to the accused Jaiprakash. It however needs to be borne in mind that the accused who were found in possession of commercial quantity in the same C.R. have been enlarged on bail. My attention is invited to the order dated 1/12/2023 passed in Bail Application No. 2967/2023 in respect of the accused – Safi Ajmal Vinchu enlarging him on bail who was found in possession of 58.5 gms of MD which is a commercial quantity. It is pertinent to note that the financial transactions are shown in the name of Nazaar Khan and not the applicant. The statements of the wife of the accused Jaiprakash later revealed that Nazaar Khan and the present applicant is one and the same person.

6. It is pertinent to note that the applicant was arrested on 21/9/2021 and now is in custody for more than two and half years. The charge has not been framed. The trial is not likely to conclude soon. There is one criminal antecedent reported against the applicant in respect of an Indian Penal Code offence. Considering that the applicant was found in possession of non-commercial quantity; the co-accused who were found in possession of commercial quantity in respect of the same C.R. are enlarged on bail; the applicant is now in custody for more than two and half years with no possibility of trial concluding any time soon; and the fact that there are no criminal antecedents reported against the applicant under the NDPS Act has prevailed upon me to form an opinion that twin conditions set out by Section 37 of the NDPS Act can be overcome. The materials against the applicant are in the form of statements of co-accused. I propose to impose stringent conditions while enlarging the applicant on bail and hence, the possibility of the applicant committing any offence during the pendency of the trial is unlikely. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight

risk. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Shariq Wali Sayed in connection with C.R. No.73 of 2021 (F.No.- NCB/MZU/CR-73/2021) registered with Narcotics Control Bureau, Mumbai, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Narcotics Control Bureau, Mumbai, once every fortnight on the first and third Wednesday of every month, between 11.00 a.m. and 1.00 p.m. till trial concludes.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) Except for attending the trial and for the purpose of reporting to the investigating officer, the applicant shall not enter the area of Mumbai/Mumbai Suburban District after being released on bail, till further orders of the trial Court. On an application made for modification of this condition at a subsequent stage, the trial Court to consider the same on its own merits.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender his passport to the investigating officer.

7. The application is disposed of.

(M. S. KARNIK, J.)